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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 000518

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TAGS: [PREL](#) [PGOV](#) [IZ](#)

SUBJECT: CHIEF JUSTICE OFFERS VIEWS ON AMNESTY

Classified By: PolCouns Matt Tueller for reasons 1.4 (b) and (d)

**¶1.** (C) Summary: At a February 20 meeting with members of the MNF-I and Embassy communities, Iraqi Chief Justice Medhat al-Mahmoud offered his views on the recently passed General Amnesty Law. Commenting that the entire law could not be applied to those in MNF-I detention, he reiterated that article 6 of the law, which concerns the potential transfer of detainees from MNF-I to GOI custody, was toothless in its utility and that no one can "use it as pressure on the Government." He characterized article 3(b), which concerns those detainees held for periods of time without access to an investigative judge or referral to a competent court, as "dangerous" and noted his concerns that the Parliament inserted this language. Already preparing to implement the unratified law, Medhat noted he had given thought to the structure and composition of the committees, developed simple applications with which those affected by the law could be seen by the committees, and held a meeting with senior officials to discuss the significant logistical hurdles that remain to implement it. Post will continue to urge Chief Justice Medhat to fully use his authority, described in article 8 of the law, to address the substantive ambiguities remaining within the text. End Summary.

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No legal pressure to transfer MNF-I detainees  
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**¶2.** (C) Medhat unequivocally stated that article 6 will not impair MNF-I security detention operations. The article, which directs "the Iraqi Government ... (to) commit() itself to taking the necessary actions to transfer detainees in MNF-I prisons to Iraqi prisons" so that they could apply the amnesty statute to those detainees, was one of a set of revisions that the CoR introduced to Medhat's original draft. Criticizing this revision, he noted, "This provision will embarrass both parties -- the Iraqi government and our friends (the USG)." He implied that those who inserted this article did so to further their political aims, notably to attempt to blame the USG for any lack of progress in transferring MNF-I detainees.

**¶3.** (U) He stated that since article 6 fails to provide any time frame for the GOI to achieve its goal of taking custody of MNF-I detainees, those who inserted it into the text "cannot use it as pressure on the Government." He acknowledged that MNF-I continues to work expeditiously to process its detainees and release all those who are not imminent threats to security, implying that MNF-I cooperation will allow the amnesty process to function without requiring a more strict interpretation of article 6.

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"Whoever wrote this law has no idea about justice"  
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**¶4.** (C) The Chief Justice repeatedly indicated that the changes made to the statute by the CoR were unwise and

demonstrated, at best, a complete lack of understanding of the legal process; at worst, they represented a desire to use the law for political manipulation. Nonetheless, Medhat was resigned to follow the law, because he acknowledged the authority of the Parliament to enact its will.

¶ 15. (C) He noted that article 3(b) was "dangerous" since it would release some detainees unintentionally. For example, those who added it did not consider those cases in which legal action was delayed because the GOI had not yet caught the accomplices of the detainee. He said that the committees would in some situations be unable to determine if a victim had suffered a permanent disability within 6 or 12 months of detaining the person accused of committing the alleged crime, which matters because causing permanent disability will exempt some detainees from amnesty. Regardless, he said article 3(b) could not apply to MNF-I detainees, because it must be read in the light of article 6, which made clear that article 3(b) only affected those within GOI custody.

¶ 16. (C) He listed additional problematic and ambiguous clauses inserted by the CoR, including the use of the term "residing" in Article 1, which he argued could be used to cover nearly any detainee, as compared to his original draft which granted amnesty only to Iraqi citizens. He noted the alteration to article 2, which previously exempted anyone sentenced to death but which now exempts only those subject to the death penalty under Penal Code No. 111 of 1969. Thus, the current version would grant amnesty to some who were sentenced to death under the Terrorism Law. For example, a terrorist who destroys a non-government building, but does not kill or permanently injure someone, would not be covered by any amnesty exception and should apparently be set free. He underscored that members of al-Qaeda could be set free by the

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law.

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Implementation so far  
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¶ 17. (U) Medhat is already considering many of the logistical hurdles that must be overcome to implement the law, and has already given thought to the structure and formation of the committees. He has drafted very simple forms which detainees or their families may fill out and submit to enter the amnesty regime; those forms will be reviewed only for those in GOI detention. When asked how this would be made clear to all relevant parties, the Chief Justice indicated it could either be done through the regulatory mechanism of article 8, which authorizes the Higher Judicial Council (HJC) to issue instructions for the implementation of the amnesty statute, or through expression on the form itself, or through other mechanisms. He has already convened a group of senior officials to begin the regulatory drafting process. He invited MNF-I and the Embassy to send representatives to observe.

¶ 18. (C) Medhat's original draft of the law called for the adjudicating committees to be headed by a judge from the HJC, and populated by members of the relevant Ministries, including Justice, Interior, Labor and Social Affairs, and Defense. The final draft, however, populates the committee only with judges. The Chief Justice expressed his fear that these ministries, who now have no stake in the statutory apparatus, would take advantage of the situation and be dilatory or non-responsive to the committees' requests for files or their orders to release detainees. He noted that he has no ability to force these ministries to send representatives to the committees, but noted that if such representatives were present, it would alleviate the situation greatly.

¶ 19. (C) Medhat agreed that it would be prudent to review those cases of women and juveniles first, calling them the most

vulnerable. Jokingly, he called it ageism that old men such as himself would probably be left until the end. He argued that this implementation would make it harder for any opposition to invalidate the amnesty process.

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Ratification still required  
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¶10. (C) The General Amnesty Law was passed to the Presidency Council (PC) around February 17 in the omnibus package that included the "Law of Provinces not formed into Regions" (Provincial Powers) and the 2008 budget law. Though we have no indication that the PC has concerns that would warrant a veto of the law, its fate is tied with these other two laws. According to VP Abd al-Mehdi, the PC has until February 26 to veto or sign the law. Lack of Presidency Council action by this date would constitute ratification.

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Comment  
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¶11. (C) Post is concerned that the Chief Justice is unwilling to fully use the authority in article 8 to address substantive ambiguities or problems in the statute. Although Medhat noted problem after problem, he expressed an intention only to issue procedural instructions -- that is, how committees are formed, who can submit claims, where the files should go, when and how decisions should be issued, how the judgment would be relayed to the detainee and his family, the mechanism for appeal, and other such ministerial matters. He stated he would leave questions of interpretation of the statutory text to the committees, decisions of which would percolate up to the district courts of appeals for resolution.

¶12. (C) Post is also concerned with the situation of those who would be released and the process of reintegration. The Chief Justice declined any responsibility beyond adjudication of the cases. Without adequate measures taken to provide those released with transportation and provisions for employment, basic needs and social services, they may destabilize local economies and fuel social unrest. Although Medhat noted that our concerns were exaggerated, since there are releases occurring already, we believe that the greater number of releases contemplated by this new law could strain any existing mechanisms. We have learned from the British Embassy that there is an embryonic inter-ministerial effort within the GOI to begin planning for the releases, to include employment assistance and basic social services. We will continue to investigate this effort.

¶13. (C) We will also continue to engage the GOI on potential

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issues regarding the implementation of the law. We will provide further input on substantive and procedural matters, including those described above. We are preparing a preliminary letter for Medhat that will allow us to address some of these concerns more fully. To assuage Medhat's concern that other Ministries will not assist the adjudicating committees, we will urge the Ministerial Council for National Security (MCNS) to invite Medhat to discuss the law and his need for cooperation.

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